No. 78-1823

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

TEAMSTERS LOCAL UNION NO. 30,
and TOM SEVER and all others similarly situated,

Petitioners,

v.

HELMS EXPRESS, INC.,
a division of Ryder Truck Lines, and the
EASTERN CONFERENCE OF TEAMSTERS,

Respondents.

ON PETITION FOR A WRIT OF *CERTIORARI* TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION FOR THE EASTERN CONFERENCE OF TEAMSTERS

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OPINIONS BELOW

The opinion of the Court of Appeals (Pet. App. 1b-14b)[1] is reported at 591 F.2d 211. The opinion and Order of the District Court (Pet. App. 1a-9a) are not officially reported.

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1. "Pet. App." refers to the appendix to the Petition for a Writ of *Certiorari*. "A." references are to the appendix to the briefs below; a copy has been lodged with this Court. "S. App." references are to the appendix to this Brief in Opposition.

JURISDICTION

The opinion of the Court of Appeals is dated January 5, 1979. On March 8, 1979, the Court denied Petitioners' petition for rehearing. The Petition for a Writ of *Certiorari* was filed on June 8, 1979. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

QUESTION PRESENTED

Whether it was error for the District Court to refuse to set aside a grievance-arbitration decision under a collective bargaining agreement in circumstances where there was no evidence of fraud, collusion, or breach of the duty of fair representation and the arbitration decision made meaningful the contractual principle of "a fair day's work for a fair day's pay" by approving work standards which the arbitrator considered reasonable.

STATUTE INVOLVED

The relevant provisions of the Labor-Management Relations Act, 29 U.S.C. §§173(d) and 185, are set forth at S. App. 1.

STATEMENT

A. Facts

On October 7, 1977, Teamsters Local Union No. 30 (hereafter "Local 30") and Tom Sever (hereafter "Sever") filed a Complaint pursuant to Section 301(a) of the Labor-Management Relations Act, 29 U.S.C. §185(a), seeking to set aside a decision of the Eastern Conference Joint Area Committee (hereafter "the Committee" or "ECJAC"). The Complaint named as defendants Helms Express, Inc., a division of Ryder Truck Lines (hereafter "Helms") and the Eastern Conference of Teamsters (hereafter "Eastern Conference"). Helms, which employs Sever and other members of the asserted class, and Local 30 are parties to the National Master Freight Agreement (hereafter "NMFA") and the Joint Council No. 40 Local Cartage Supplemental Agreement (hereafter "Supplement"). The Eastern Conference is an affiliate of the International Brotherhood of Teamsters and serves many constituent Local Unions, including Local 30.

The NMFA is the product of multi-employer bargaining between Trucking Employers, Inc. and the Teamsters National Freight Industry Negotiating Committee, which represents Local Unions, including Local 30, affiliated with the International Brotherhood of Teamsters (A. 38). Both the Local Unions and the Teamsters National Freight Industry Negotiating Committee are parties to the NMFA (A. 38). The NMFA is an industry-wide agreement which contains area supplemental agreements which specify additional terms and conditions applicable to employers and Local Unions in that area. In the instant case, the Supplement is between the Western Pennsylvania Motor Carriers Association and the Teamsters Joint Council No. 40 Freight Division, representing specified Local Unions, including Local 30. The NMFA and the Supplement constitute the entire collective bargaining agreement between the parties to that contract.

The NMFA and Supplement contain, *inter alia*, a mandatory procedure for the resolution of all disputes between the parties. Whenever a Local Union and an employer cannot settle a dispute, it must be referred to the Western Pennsylvania Joint Area Committee, consisting of three representatives appointed by the unions and three representatives appointed by the employers. A majority decision by the Committee is final and binding on both parties, with no appeal (A. 62-63).

When the Western Pennsylvania Committee deadlocks, the grievance is submitted to the ECJAC unless it involves a discharge. The Union Co-Secretary and the Employer Co-Secretary each appoint three representatives to the ECJAC panel. A majority decision of the ECJAC is final and binding, with no further appeal (A. 63). Cases deadlocked by the ECJAC are referred to the National Grievance Committee, whose decisions are also final and binding. When the National Committee deadlocks, the parties may resort to economic pressure or litigation (A. 44-45).

The instant dispute arises over the interpretation and application of Article 20 of the NMFA. That Article states, in pertinent part (A. 52):

> The Union, its members and the employer agree at all times as fully as it may be within their power to further their mutual interests and interests of the trucking industry and the International Brotherhood of Teamsters nationwide. The Union and the employer recognize the principle of a fair day's work for a fair day's pay; the jobs and job security of employees working under this agreement are best protected through efficient and productive operations of the employer and the trucking industry. The employer may establish reasonable work standards which shall take into account all factors relating to the work assignment, run, terminal and territorial operational conditions, subject to agreement and approval of the local union, and to be filed for approval with the Conference Joint Area Committee.

The Complaint involves the implementation of productivity standards by Helms, Local 30's objection to those standards, and a subsequent determination of their validity by the ECJAC.

The Complaint alleges that on or about October 22, 1976, Plaintiff Tom Sever was informed by Helms that his productivity fell below a certain standard, and that he was being suspended without pay for a period of one day (A. 4, 10). Approximately ten other employees received similar suspensions for failure to meet the productivity standards (A. 4). It is alleged in the Complaint that the productivity standards or measurement program were enacted unilaterally by Helms without negotiation, agreement, or approval by the Local Union. It is also alleged that this productivity standard or measurement program did not take into effect all the factors referred to in Article 20 (A. 5).

After being informed of the deficiencies in their productivity, Sever and the other employees complained to Local 30, which filed grievances on their behalf (A. 5, 11). Local 30 and Helms agreed that Sever's grievance would serve as the pilot grievance, with its result to be controlling upon the other employees. The grievance procedure set forth in the Supplement was followed.

Before the Committee, the Company referred to scheduled meetings between the Company and Local 30 and Local 30's failure to cooperate. The Company argued that it disciplined additional employees only when Local 30 failed to cooperate and that the suspensions were based upon "low production when compared to their peers" (A. 12). The Western Pennsylvania Joint Area Committee deadlocked, however, and the case was referred to the ECJAC (A. 5, 12).

The grievance was then presented to an ECJAC meeting in Virginia Beach, Virginia, on April 27, 1977. The Complaint alleges that the same Committee heard 22 other grievances involving other Local Unions that same day (A. 6). After hearing a presentation by both Helms and Local 30, the ECJAC rendered the following decision (A. 6, 13):

> The panel in executive session, motion made, seconded, and carried that, due to the company's failure to obtain agreement with the local union or approval of this Committee prior to putting into effect the productivity measurement program, the specific claims listed in this case are upheld on the basis of eight hours pay for each day of suspension. The Committee further rules that the productivity measurement program, as presented is not in violation of the contract and may be implemented beginning May 1, 1977. Cost split.

Under the terms of the Supplement, this decision by the ECJAC was final and binding upon the parties, and no appeal could be taken (A. 63). However, Local 30's President Walter Chrzan wrote to Frank Fitzsimmons, President of the Teamsters International Union, and attempted to appeal the decision and requested a rehearing (A. 6, 14-15). The matter was referred by the International back to the ECJAC for handling. The matter was taken up by the ECJAC at its July, 1977 meeting. It ruled that the original decision was "final and binding." (A. 6-7, 16-17).

After exhausting the contractual grievance procedure without obtaining a satisfactory result, Local 30 and Sever filed the instant Complaint, alleging that 100 employees have received warning letters and 25 employees have been suspended

following the implementation of the productivity standards on May 1, 1977 (A. 7, 18-21). The Complaint further alleged that the productivity standards were enacted in clear violation of the NMFA (A. 5), despite the fact that the ECJAC found that the productivity measurement program did not violate the contract and permitted its implementation (A. 6). The Complaint further alleged that the Eastern Conference of Teamsters violated its "duty of fair representation" to Local 30 and its members by its "conscious collusion" with the employer representatives on the ECJAC, and by failing to uphold the grievance of the Plaintiffs or to consider the collective bargaining agreement (A. 8). Also in conclusory fashion, the Complaint alleged that the decision of the ECJAC was beyond its authority under the NMFA: that it was not adequately grounded in, nor did it draw its essence from, the basic collective bargaining agreement; that it was arbitrary and capricious and internally inconsistent; and that the procedure employed in the instant grievances failed to meet basic standards of fairness (A. 7-8).

Local 30 and Sever filed an application for a temporary restraining order and a preliminary injunction. Following the introduction of certain evidence and oral argument by counsel, Plaintiffs Local 30 and Sever withdrew their request for a temporary restraining order (A. 1). Subsequently, both Defendants Helms and Eastern Conference filed Motions to Dismiss.

B. The District Court's Conclusions

The District Court concluded that "the ECJAC decision was rationally derived from the contract . . .." (Pet. App. 5a); that the ECJAC decided an issue which had been properly submitted to it (Pet. App. 6a-7a); and that the Eastern Conference did not breach a duty of fair representation in processing the grievance (Pet. App. 7a-8a). The District Court thereupon dismissed the Complaint.

C. The Court of Appeals' Conclusions

The Court of Appeals for the Third Circuit affirmed in a unanimous decision. The Court concluded that the "ECJAC's

award is merely action that decides 'unforeseen or unresolved problems arising out of gaps . . . in the contract'" (Pet. App. 10b); that a Committee award is entitled to as much deference as a neutral arbitrator's award (Pet. App. 10b-11b); and that the Conference owes no duty of fair representation to the Petitioners (Pet. App. 11b-13b).

The Court denied a Petition for Reconsideration.

ARGUMENT

In fiscal 1977, the FMCS provided arbitrators in 11,985 cases,[2] and the AAA provided arbitrators in an additional 14,661 cases.[3] Innumerable other disputes are arbitrated before tribunals selected by other methods. If, as Petitioners request, this Court considers relaxing the limited standards for reviewing arbitration awards, dissatisfied grievants will flood the courts with requests to overturn adverse arbitration awards. Petitioners clearly seek to create a new basis for reviewing an arbitration award, for their arguments do not fall within the generally recognized rationales for setting aside an award.

1. Petitioners misapply the principle that courts considering a motion to dismiss must treat as admitted the well-pleaded allegations in the Complaint. The principle quite reasonably applies where, as in *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969), the court considers each case *de novo*. However, where the courts must consider the finality to be afforded an arbitration award, different principles apply. As this Court has long held, courts asked to overturn an arbitration award do not retry the facts submitted to the arbitrator. Rather, reviewing courts must first determine whether some fatal defect undermines the arbitrator's award, and, only if so, may they consider the merits

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2. Federal Mediation and Conciliation Service, Thirtieth Annual Report, Fiscal Year, 1977, p. 38.

3. American Arbitration Association, 1977-1978 Annual Report, p. 13.

of the contractual grievance. *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554, 562-563, 570-572 (1976); *Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 598-599 (1960); *Steelworkers v. American Mfg. Co.*, 363 U.S. 564, 568 (1960). Here, the Complaint's allegations that the productivity standard was "unreasonable" and that Helms failed to discuss or negotiate the standards with the Local Union were precisely the arguments submitted to, and rejected by, the arbitrator (A. 12). These allegations, without more, are no different than the mere allegation that an employee was "unjustly discharged"; the court must ignore the underlying factual dispute until it concludes that the award must be set aside.

Simply stated, the reviewing courts properly accepted the arbitrator's award absent a fatal defect in the arbitration process. Here, as the District Court and the Court of Appeals both concluded, the arbitration process afforded Petitioners every protection required by law and there was no breach of the duty of fair representation. Petitioners have not challenged these conclusions.

2. Petitioners currently argue that the award "does not draw its essence from the contract" (Pet. App. at 7-10). However, the issue raised is not worthy of review by this Court. The principles applied by the Court of Appeals, are universally acknowledged; i.e., courts will enforce an award (1) which can in a "rational way be derived from the agreement, viewed in the light of the language, its context, and . . . other indicia of the parties' intention" (Pet. App. 9b) and (2) which decides "unforeseen or unresolved problems arising out of gaps . . . in the contract" (Pet. App. 10b). *See, e.g.*, *Crigger v. Allied Chemical Corp.*, 367 F. Supp. 1133, 1138-1139 (S. D. W. Va. 1973), *aff'd.*, 500 F.2d 1218, 1219 (4th Cir. 1974); *Auto Workers v. White Motor Corp.*, 505 F.2d 1193, 1198-1199 (8th Cir. 1974), *cert. denied*, 421 U.S. 921 (1975); *Machinists v. Modern Air Transport, Inc.*, 495 F.2d 1241, 1244 (5th Cir. 1974), *cert. denied*, 419 U.S. 1050; *Newspaper Guild v. Tribune Publishing Co.*, 407 F.2d 1327, 1328 (9th Cir. 1969); *Electrical Workers v. Peerless Pressed Metal Corp.*, 489 F.2d 768, 769 (1st Cir. 1973). *See also* Feller, *"Arbitration: The Days of Its Glory are Numbered"*, **2 Industrial Relations Law Journal, 97, 104-105 (1977).**

Within this legal framework, the issue in each case is one of fact: whether the arbitrator's award "draws its essence" from the contract. Of course, this Court has denied *certiorari* where review is sought of a lower court decision which turns solely upon an analysis of the particular facts involved, or upon the construction of a particular contract. *United States v. Johnston*, 268 U.S. 220, 227 (1925).

3. There is no conflict between circuits which warrants a grant of *certiorari* in the instant case. In *Detroit Coil Co. v. Machinists, Lodge 82*, 594 F.2d 575 (6th Cir. 1979), the court applied the legal standards used by the Third Circuit, but reached a contrary result because of facts peculiar to that case and that contract. There, the union's timely letter requesting arbitration was not received within the time limits set forth in the contract. The arbitrator held, with the District Court's approval, that, under the facts presented, timely mailing was sufficient, but the Sixth Circuit disagreed, finding the contract silent on the issue. No other clause in the contract was remotely applicable to the issue. Assuming, *arguendo*, [4] that *Detroit Coil* was correctly decided, it is clearly distinguishable from the instant case.

Here, the contract is silent on the possibility that a union will wrongfully refuse to meet with an employer to discuss production standards. But the contract does give the ECJAC authority to define "just cause" for discipline and the parameters of "a fair day's work for a fair day's pay" (A. 62) and to "settle" disputes. Local 30 specifically raised precisely these issues by arguing that Sever "worked at an acceptable level" (A. 12). The ECJAC held that there was no "just cause" for discipline in the case presented because there had been no prior approval of the productivity standards, and no evidence that the standards had been announced prior to the imposition of discipline. At the same time, the Committee recognized that all contractual benefits are premised on a "fair day's work" and that failure to perform up to a reasonable standard must constitute "just cause" for discipline. Rather than consider an endless parade of cases, the Committee then considered productivity standards for pro-

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4. On the other hand, we submit *certiorari* is more appropriate in *Detroit Coil* than in the instant case.

spective application only. After reviewing the standards proposed by the Company, it concluded that they were "not in violation of the contract," (i.e., not unreasonable (A. 62)) and that, henceforth, violation of those standards would constitute "just cause" for future discipline. The new standard would become effective only after notice to all affected employees. *Cf. Miranda v. Arizona*, 384 U.S. 436, 478-479 (1966), where the Court promulgated standards it would apply in future cases.

Considered in this light, the Third Circuit did not conclude that the ECJAC decision was in "manifest disregard of the agreement" or irrationally drawn from the contract. Moreover, its decision is consistent with *Cooper-Jarrett, Inc.*, 239 NLRB No. 117 (1978), where the National Labor Relations Board reached a similar result in a case involving the same contract provision.

CONCLUSION

For the reasons stated herein, the Petition for Writ of *Certiorari* should be denied.

Respectfully submitted,

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July, 1979

APPENDIX A

STATUTES INVOLVED

29 U.S.C. § 173(d)

> Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement. . The Service is directed to make its conciliation and mediation services available in the settlement of such grievance disputes only as a last resort and in exceptional cases.

29 U.S.C. § 185

> (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.